

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 22-81256-CV-MIDDLEBROOKS

AFFORDABLE AERIAL PHOTOGRAPHY, INC.,

Plaintiff,

v.

WC REALTY GROUP, INC. d/b/a  
CENTURY 21 WC REALTY,

Defendant.

ORDER ON MOTION TO RECONSIDER

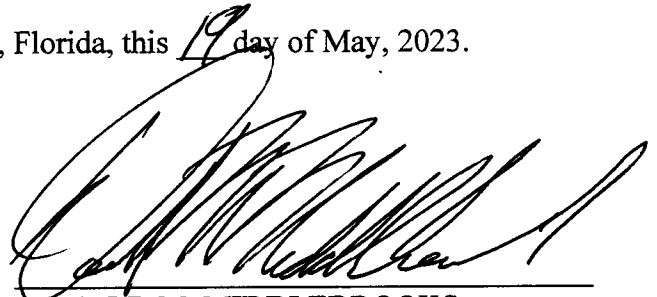
This cause is before the Court on Defendant WC Realty Group Inc.'s Motion to Reconsider the Court's Order Denying an Award of Prevailing Party Attorneys' Fees, filed May 5, 2023. (DE 43).

In *Kirtsaeng v. John Wiley & Sons, Inc.*, 579 US 197 (2016), the Supreme Court held that a district court, in exercising its authority under the Copyright Act to award attorney's fees, should give substantial weight to the objective reasonableness of the losing party's position. In adopting that approach, Justice Kagan stated that "[a] district court that has ruled on the merits of a copyright case can easily assess whether the losing party advanced an unreasonable claim or defense. That is closely related to what the court has already done: In deciding any case, a judge cannot help but consider the strength and weaknesses of each side's arguments." *Id.* at 207. *Kirtsaeng* also noted the Court's "oft-stated concern that an application for attorney's fees should not result in a second major litigation." *Id.* (citations omitted.)

In this case, I never ruled on the merits of the claim. It was dismissed with prejudice shortly after the motion to dismiss. Viewing all the circumstances of the case, in light of the Copyright Act's essential goals, I saw no reason to award fees and further proceedings seemed inadvisable.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant WC Realty's Motion to Reconsider the Court's Order Denying an Award of Prevailing Party Attorneys' Fees (DE 43) is **DENIED**.

**SIGNED** in Chambers at West Palm Beach, Florida, this 19 day of May, 2023.

A handwritten signature in black ink, appearing to read 'Donald M. Middlebrooks', written over a horizontal line.

DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE